

STATE OF WASHINGTON  
DEPARTMENT OF ECOLOGY

In the Matter of Remedial )  
Action by: )  
 )  
Mr. Man Kyu Pak )  
Black Lake Grocery )  
4409 Black Lake Boulevard )  
Olympia, Washington 98502-2250 )  
\_\_\_\_\_ )

AGREED ORDER

No. DE 93TC-S171

To: Mr. Man Kyu Pak

I.

JURISDICTION

This Agreed Order ("Order") is issued pursuant to the authority of RCW 70.105D.050(1).

II.

FINDINGS OF FACT

Ecology makes the following Findings of Fact, without admission of such facts by Mr. Man Kyu Pak:

A. Mr. Man Kyu Pak is the owner of the Black Lake Grocery located at 4409 Black Lake Boulevard, Olympia, Washington (Site).

B. In "Addendum Report of Geotechnical Services, Black Lake Boulevard Expansion" (Dames and Moore, March 2, 1990), levels of petroleum contamination in soil and ground water on-site and in areas adjacent to the site were found to be in excess of Model Toxics Control Act (MTCA) (Chapter 173-340 WAC) Method A cleanup standards.

C. Underground storage tanks (USTs) on-site were tightness tested on October 2, 1990. Although one tank failed the initial test, it was later re-tested on December 18, 1990, and found to be tight.

D. On October 16, 1990, the store's water supply well and a neighboring well were sampled. Analytical results showed benzene levels at 36.5 micrograms per liter (ug/l) for the store's well. The Method A cleanup level for benzene is 5.0 ug/l. Contaminants were not detected in samples collected from the neighboring well.

E. On May 23, 1991, Mr. Pak was sent a letter from Ecology outlining the requirements for receiving financial assistance from Ecology for cleaning up contaminated leaking underground storage tank (LUST) sites. The letter included an application and a request that the form be submitted to Ecology if financial assistance is needed. No application was filed with Ecology at that time.

F. On September 13, 1991, Mr. Pak was sent a second letter from Ecology outlining the requirements for owners of LUST sites. No response was received from Mr. Pak.

G. On February 27, 1992, Ecology sent a third letter restating the reporting requirement to Mr. Pak by certified mail. Mr. Pak responded by telephone and requested a meeting with Ecology to discuss the future of the site.

H. On March 10, 1992, Mr. Pak attended a meeting with Lynn Gooding, Tom Todd, and Dick Walker of Ecology and Tim Tayne of the Thurston County Health Department. At that meeting, Mr. Pak agreed to conduct new tightness tests for his

currently used tanks (UST regulation requirement) and to make arrangements for the removal of the two USTs no longer being used.

I. On March 13, 1992, tightness tests were performed on the in-use tanks. These tanks tested tight.

J. On April 20, 1992, Mr. Pak submitted an application for financial assistance. It was determined that Mr. Pak would be required to finance up to \$100,000 of the cleanup costs. The application did not include all the personal financial records necessary to make a final determination of financial capability.

K. On April 22 and 23, 1992, two USTs no longer in use were removed and soil samples were collected from the tank excavation. Analytical results showed levels of total petroleum hydrocarbons (TPH) as gasoline of 650 and 530 milligrams per kilogram (mg/kg). The Method A standard for TPH as gasoline is 100 mg/kg.

L. On May 22, 1992, Mr. Pak attended a meeting with Lynn Gooding and Hun Seak Park of the Pollution Liability Insurance Agency to discuss Mr. Pak's financial eligibility. Mr. Pak agreed to submit additional financial information to Ecology. It was determined, at a minimum, Mr. Pak would be responsible for up to \$100,000 of the cleanup costs. After submitting the requested information, it was determined that Mr. Pak did not qualify for financial assistance.

M. On April 12, 1993, Ecology sent Draft Agreed Order No. DE 93TC-S171 for Mr. Pak to review. A cover letter attached to the Agreed Order specified a time line for negotiations to begin and requested Mr. Pak to contact Ecology by April 22, 1993.

N Ecology telephoned Mr. Pak on April 26, 1993, after he did not respond to receiving Draft Agreed Order No. DE 93TC-S171. On April 27, 1993, Mr. Pak met with Ecology to discuss the Order. Mr. Pak mentioned that he had planned to demolish the store and remove USTs no longer in use. It was decided that a new Order would have to be drafted. Mr. Pak said he was willing to cooperate with Ecology in fulfilling the requirements of the new order.

O. On June 23, 1993, Ecology sent a revised draft of Agreed Order No. DE 93TC-S171 to Mr. Pak to comment. On July 7, 1993, Mr. Pak met with Ecology to discuss the Order. Mr. Pak stated that his attorney was reviewing the Order and that he was in the process of securing bids from several environmental consultants.

P. On August 4, 1993, Ecology contacted Mr. Frank Groundwater, attorney for Mr. Pak, and was notified that Mr. Pak would not sign the Agreed Order and wanted to proceed with a voluntary cleanup of the site, thus ending negotiations.

Q. On August 9, 1993, Ecology contacted Mr. Groundwater to insure that both he and Mr. Pak understood that voluntary site investigation and cleanup was not permitted while negotiating the agreed order, and once again extended the opportunity for Mr. Pak to continue negotiations for the agreed order.

R. On August 13, 1993, Ecology contacted Mr. Groundwater and was informed that Mr. Pak had proceeded with independent actions at the site. Ecology was also informed that Mr. Pak still refused to sign the agreed order.

S. On August 17, 1993, a conference call was held between Ecology and Mr. Groundwater and Mr. Robert Fristoe, legal counsel for Mr. Pak. Representing Ecology

were Ms. Tammy Hall, Mr. Kelly Susewind, and Ms. Christina Beusch, of the Attorney General's Office. During this meeting, counsel for Mr. Pak requested cost recovery language in the Order be modified to state that Ecology would not contract work to be performed at the site unless Mr. Pak failed to fulfill the requirements of this Order.

T. On August 18, 1993, an official request from Mr. Groundwater was made on behalf of Mr. Pak to re-open negotiations for the Agreed Order, requesting that the language in the Order be modified. This request was granted by Ecology.

### III.

#### ECOLOGY DETERMINATIONS

A. Mr. Man Pak is an "owner" as defined at RCW 70.105D.020(6) of a "facility" as defined in RCW 70.105D.020(3).

B. The facility is known as Black Lake Grocery and is located at 4409 Black Lake Boulevard, Olympia, Washington.

C. The substances found at the facility as described above are "hazardous substances" as defined at RCW 70.105D.020(5).

D. Based on the presence of these hazardous substances at the facility and all factors known to the Department, there has been a release or threatened release of hazardous substances from the facility, as defined at RCW 70.105D.020(10).

E. By letter dated September 28, 1992, Ecology notified Mr. Pak as to his status as a "potentially liable person" under RCW 70.105D.040 after notice and opportunity to comment.

F. Pursuant to RCW 70.105D.030(1) and 70.105D.050, the Department may require potentially liable persons to investigate or conduct other remedial actions with respect to the release or threatened release of hazardous substances, whenever it believes such action to be in the public interest.

G. Based on the foregoing facts, Ecology believes the remedial action required by this Order is in the public interest.

#### IV.

#### WORK TO BE PERFORMED

As an interim action, Mr. Man Pak plans to conduct the removal of three underground storage tanks. It is believed that these may have leaked or are leaking petroleum products and therefore could be serving as a source of continuing contamination. While conducting this tank removal, Mr. Man Pak also plans to excavate and remove petroleum contaminated soils. In order to ensure that this excavation activity protects human health and the environment, Ecology is requiring an initial site investigation as Phase I prior to conducting the contaminated soil removal, which has been designated as Phase II. Based on the outcome of Phase I activities, Ecology shall approve or disapprove Phase II.

If Phase II cannot be conducted due to excessive contamination or Phase II does not result in attaining Method A cleanup standards at the site (for both soil and groundwater), a remedial investigation/feasibility study (RI/FS) shall be required upon the completion of work described in this Order. The RI/FS, if necessary, will be required by an amendment

to this Order or issuance of a new order. Selection of a final cleanup action(s) would be based on this RI/FS.

Based on the foregoing Facts and Determinations, it is hereby ordered that Mr. Man Pak take the following actions at the site:

1. **Submit results for all independent work performed at the site since negotiations began on April 12, 1993.** This shall include a description of the sampling locations, sampling methods, decontamination procedures, chain of custody protocols, analytical methods, field and laboratory QA/QC procedures including laboratory data sheets, all field notes, records, photographs. This information shall be used to verify the reliability of the data collected and modify requirements of this order, if necessary. This information shall be submitted to Ecology for comments within three (3) weeks from the effective date of this order.
2. **Submit a work plan which describes Phase I of the interim action which shall be an initial site investigation.** Phase I shall consist of an initial site investigation to determine the extent and degree of soil and groundwater contamination at the site. This work plan shall include a sampling and analysis plan as outlined in WAC 173-340-820 which includes a quality assurance/quality control plan. A safety and health plan as required by WAC 173-340-810 shall be submitted as a separate document. This Phase I work plan shall include the following information:

- a. A site map showing locations of the following:
  - 1) Buildings or structures existing at the site and any off-site structures which may have an impact on the proposed Phase I activities.
  - 2) All utilities, including underground and overhead utilities.
  - 3) The domestic well.
  - 4) Any existing monitoring wells.
  
- b. An outline and schedule for Phase I activities which shall consist of excavation of test pits and any other methods appropriate to achieve Phase I objectives. At a minimum, test pits will be excavated at the following locations:
  - 1) Areas surrounding B-8.
  - 2) Between B-9 and the stream.
  - 3) Any other area deemed necessary.

Soil samples shall be collected from each test pit and analyzed for total petroleum hydrocarbons as gasoline (WTPH-G), benzene, toluene, ethylbenzene, and xylene (BTEX), lead (Pb), and ethylene dibromide (EDB). If possible, water samples from each pit shall also be analyzed for the same compounds. In addition, at least one representative soil sample shall be analyzed according to the Toxicity Characteristic



Leaching Procedures for lead (TCLP) to ensure that the contaminated soil is not designated as a dangerous waste per Ch. 173-303 WAC.

A field reconnaissance shall also be conducted to look for visual evidence of contamination and possibly collect surface water samples.

A draft Phase I work plan, including a sampling and analysis plan and a health and safety plan, shall be submitted to Ecology within three (3) weeks following receipt of Ecology's comments on the independent site investigation.

3. **Submit a revised Phase I work plan which addresses Ecology's comments on the draft work plan.** The revised Phase I work plan shall be submitted to Ecology three (3) weeks after receiving Ecology's comments on the draft work plan.
4. **Conduct Phase I in accordance with the approved work plan.**
5. **Submit a draft investigation report which describes the results of Phase I.** This report shall include a site map showing locations of the test pits, results of analytical sampling including original laboratory data sheets, field

observations, and any additional information which is important or relevant. If Ecology determines, based on the results of Phase I, that significant free petroleum product or gross contamination is present, or that the extent of contamination is beyond that which is feasible to excavate and remove, then this Order shall be amended, or a new order issued, to include a Remedial Investigation/Feasibility Study (RI/FS) as described in WAC 173-340-350. If this determination is made, Phase II, as outlined below, shall not be conducted.

If it is determined that site conditions will allow the excavation and removal of contaminated soil, then data gathered during Phase I will be used to plan Phase II.

This investigation report shall be submitted to Ecology three (3) weeks following the completion of the Phase I field activities.

6. **Submit a revised Phase I investigation report.** This document shall be submitted Ecology three (3) weeks after receiving Ecology's comments on the draft completion report.

7. **Submit a draft Phase II work plan.** If Ecology has determined that Phase II will occur, then a work plan shall be submitted which describes the proposed Phase II activities. This work plan shall consist of the following information:
- a. Table showing MTCA method A cleanup standards.
  - b. A site map showing the areas to be excavated and backfilled.
  - c. A volume estimate of contaminated soil to be removed in order to achieve MTCA Method A cleanup standards at the site and the basis for the calculations.
  - d. Procedures for pumping contaminated groundwater from the excavation prior to backfilling. This shall also include an estimate of the volume of groundwater that will be removed and the basis for the estimate.
  - e. A discussion of how pumped groundwater will be treated and discharged, including expected contaminant concentrations after treatment.
  - f. Soil and water sampling procedures which will be followed. Criteria to determine adequate and characteristic confirmatory sampling to establish compliance with MTCA Method A cleanup standards shall also be addressed.
  - g. Identify action levels for removing contaminated material, i.e., what contaminant concentrations will be removed.

- h. Procedures for excavating and handling contaminated soils prior to disposal including decontamination procedures.
- i. Procedures to be followed if free petroleum product is discovered during the excavation process and how it will be handled and disposed.
- j. Identify the location where the overexcavated soils will be disposed.
- k. Estimate for the amount of backfill required to fill the excavation and backfilling procedures.
- l. Proper abandonment in accordance with Chapter 173-160 WAC of any monitoring wells or the domestic well, if necessary.
- m. Installation of a minimum of one monitoring well in the backfilled excavation to monitor any residual groundwater contamination which may remain following the interim action. These data will be used to determine if further action is necessary at the site.
- n. Identify permits that will be required to implement the interim action.
- o. A schedule of all activities including obtaining all necessary permits.

Soil and water samples collected will be analyzed for total petroleum hydrocarbons as gasoline (WTPH-G), benzene, toluene, ethylbenzene, and xylene (BTEX), and lead (Pb).

This work plan shall include a sampling and analysis plan as outlined in WAC 173-340-820 which includes a quality assurance/quality control plan. A safety

and health plan as required by WAC 173-340-810 shall be submitted as a separate document. It will be acceptable to use the same plans as submitted for Phase I, modified as necessary.

This draft work plan shall be submitted to Ecology four (4) weeks following the completion of the final Phase I investigation report.

8. **Submit a final Phase II interim action work plan.** This work plan shall be submitted to Ecology three (3) weeks after receiving Ecology's comments on the draft work plan.
9. **Conduct Phase II in accordance with the approved Phase II work plan.**
10. **Submit a draft Phase II report.** This report shall be submitted to Ecology three (3) weeks following the completion of the Phase II activities. This report shall include all data and observations gathered during the soil removal including original laboratory data sheets.
11. **Submit a revised Phase II report based on Ecology's comments on the draft Phase II report.** This shall be submitted to Ecology three (3) weeks after receiving comments on the draft Phase II report.

V.

## TERMS AND CONDITIONS OF ORDER

A. Definitions. Unless otherwise specified, the definitions set forth in Chapter 70.105D RCW and Chapter 173-340 WAC shall control the meanings of the terms used in this Order.

B. Public Notice. RCW 70.105D.030(2)(a) requires that, at a minimum, this Order be subject to concurrent public notice. Ecology shall be responsible for providing such public notice and reserves the right to modify or withdraw any provisions of this Order should public comment disclose facts or considerations which indicate to Ecology that the Order is inadequate or improper in any respect.

C. Remedial Action Costs. Mr. Man Pak shall pay to Ecology costs incurred by Ecology pursuant to this Order. These costs shall include work performed by Ecology under Chapter 70.105D RCW both prior to and subsequent to the issuance of this Order for Order preparation, oversight, and administration. Ecology costs shall include costs of direct activities; e.g., employee salary, laboratory costs, travel costs, and employee benefit packages; and agency indirect costs of direct activities. In the event that Mr. Pak fails to perform the actions required under this Agreed Order, Mr. Man Kyu Pak shall be responsible for the costs of work performed by contractors hired by the Department of Ecology to perform such work at the site.

Mr. Man Pak shall pay the required amount within 90 days of receiving from Ecology an itemized statement of costs that includes a summary of costs incurred, an identification of involved staff, and the amount of time spent by involved staff members on the project. A general description of work performed will be provided upon request. Itemized

statements shall be prepared quarterly. Failure to pay Ecology's costs within 90 days of receipt of the itemized statement of costs may result in interest charges.

D. Designated Project Coordinators. The project coordinator for Ecology is:

Tammy Hall  
Department of Ecology  
Southwest Regional Office  
P.O. Box 47775  
Olympia, Washington 98504-7775

Telephone: (206) 586-5557

The project coordinator for Mr. Man Pak shall be designated within 7 days of the effective date of this Order. The name, address, and telephone number will be provided to the Ecology project coordinator in writing by this deadline.

The project coordinator(s) shall be responsible for overseeing the implementation of this Order. To the maximum extent possible, communications between Ecology and Mr. Man Pak, and all documents, including reports, approvals, and other correspondence concerning the activities performed pursuant to the terms and conditions of this Order, shall be directed through the project coordinator(s). Should Ecology or Mr. Man Pak change project coordinator(s), written notification shall be provided to Ecology or Mr. Man Pak at least ten (10) calendar days prior to the change.

E. Performance. All work performed pursuant to this Order shall be under the direction and supervision, as necessary, of a professional engineer or hydrogeologist, or similar expert, with appropriate training, experience and expertise in hazardous waste site investigation and cleanup. Mr. Man Pak shall notify Ecology as to the identity of such engineer(s) or hydrogeologist(s), and of any contractors and subcontractors to be used in

carrying out the terms of this Order, in advance of their involvement at the Site. Mr. Man Pak shall provide a copy this Order and shall ensure that all work undertaken by such agents, contractors, and subcontractors will be in compliance with this Order.

Except when necessary to abate an emergency situation, Mr. Man Pak shall not perform any remedial actions at Black Lake Grocery, outside that required by this Order unless Ecology concurs, in writing, with such additional remedial actions.

F. Access. Ecology or any Ecology authorized representative shall have the authority to enter and freely move about all property at the Site at all reasonable times for the purposes of, inter alia: inspecting records, operation logs, and contracts related to the work being performed pursuant to this Order; reviewing the progress in carrying out the terms of this Order; conducting such tests or collecting samples as Ecology or the project coordinator may deem necessary; using a camera, sound recording, or other documentary type equipment to record work done pursuant to this Order; and verifying the data submitted to Ecology by Mr. Man Pak. By signing this Agreed Order, Mr. Man Pak agrees that this Order constitutes reasonable notice of access, and agrees to allow access to the Site at all reasonable times for purposes of overseeing work performed under this Order. Ecology shall allow split or replicate samples to be taken by Mr. Pak during an inspection unless doing so interferes with Ecology's sampling. Mr. Pak shall allow split or replicate samples to be taken by Ecology and shall provide seven (7) days notice before any sampling activity.

G. Public Participation. Mr. Man Pak shall prepare and/or update a public participation plan for the site. Ecology shall maintain the responsibility for public



participation at the site. Mr. Man Pak shall help coordinate and implement public participation for the site.

H. Retention of Records. Mr. Man Pak shall preserve in a readily retrievable fashion, during the pendency of this Order and for ten (10) years from the date of completion of the work performed pursuant to this Order, all records, reports, documents, and underlying data in its possession relevant to this Order. Should any portion of the work performed hereunder be undertaken through contractors or agents of Mr. Man Pak, a record retention requirement meeting the terms of this paragraph shall be required of such contractors and/or agents.

I. Dispute Resolution. Mr. Man Pak may request Ecology to resolve disputes which may arise during the implementation of this Order. Such request shall be in writing and directed to the signatory to this Order. Ecology resolution of the dispute shall be binding and final. Mr. Man Pak is not relieved of any requirement of this Order during the pendency of the dispute and remains responsible for timely compliance with the terms of the Order unless otherwise provided by Ecology in writing.

J. Reservation of Rights/No Settlement. This Agreed Order is not a settlement under Chapter 70.105D RCW. Ecology's signature on this Order in no way constitutes a covenant not to sue or a compromise of any Ecology rights or authority. Ecology will not, however, bring an action against Mr. Man Pak to recover remedial action costs paid to and received by Ecology under this Agreed Order. In addition, Ecology will not take additional enforcement actions against Mr. Man Pak to require those remedial actions required by this Agreed Order, provided Mr. Man Pak complies with this Agreed Order.

Ecology reserves the right, however, to require additional remedial actions at the Site should it deem such actions necessary.

Ecology also reserves all rights regarding the injury to, destruction of, or loss of natural resources resulting from the release or threatened release of hazardous substances from Black Lake Grocery.

In the event Ecology determines that conditions at the Site are creating or have the potential to create a danger to the health or welfare of the people on the Site or in the surrounding area or to the environment, Ecology may Order Mr. Man Pak to stop further implementation of this Order for such period of time as needed to abate the danger.

K. Transference of Property. No voluntary or involuntary conveyance or relinquishment of title, easement, leasehold, or other interest in any portion of the Site shall be consummated by Mr. Man Pak without provision for continued implementation of all requirements of this Order and implementation of any remedial actions found to be necessary as a result of this Order.

Prior to transfer of any legal or equitable interest Mr. Man Pak may have in the Site or any portions thereof, Mr. Man Pak shall serve a copy of this Order upon any prospective purchaser, lessee, transferee, assignee, or other successor in such interest. At least thirty (30) days prior to finalization of any transfer, Mr. Man Pak shall notify Ecology of the contemplated transfer.

L. Compliance With Other Applicable Laws. All actions carried out by Mr. Man Pak pursuant to this Order shall be done in accordance with all applicable federal, state, and local requirements.

## VI.

### Satisfaction of this Order

The provisions of this Order shall be deemed satisfied upon Mr. Man Pak's receipt of written notification from Ecology that Mr. Man Pak has completed the remedial activity required by this Order, as amended by any modifications, and that all other provisions of this Order have been complied with.

## VII.

### Enforcement

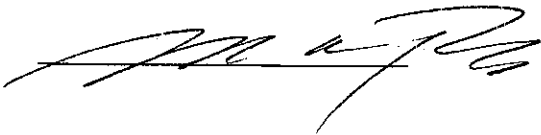
1. Pursuant to RCW 70.105D.050, this Order may be enforced as follows:
  - A. The Attorney General may bring an action to enforce this Order in a state or federal court.
  - B. The Attorney General may seek, by filing an action, if necessary, to recover amounts spent by Ecology for investigative and remedial actions and orders related to the Site.
  - C. In the event Mr. Man Pak refuses, without sufficient cause, to comply with any term of this Order, Mr. Man Pak will be liable for:
    - (1) up to three times the amount of any costs incurred by the state of Washington as a result of its refusal to comply; and
    - (2) civil penalties of up to \$25,000 per day for each day it refuses to comply.

D. This Order is not appealable to the Washington Pollution Control Hearings Board. This Order may be reviewed only as provided under RCW 70.105D.060.

Effective date of this Order: August 23, 1993

MR. MAN KYU PAK

STATE OF WASHINGTON  
DEPARTMENT OF ECOLOGY



Megan White  
Megan White, P.E.  
Southwest Region Supervisor  
Toxics Cleanup Program